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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,401	12/12/2000	Eckhard Alt	IFD/046	4641

490 7590 06/09/2006

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/735,401</p>	<p><b>Applicant(s)</b> ALT, ECKHARD</p>	
	<p><b>Examiner</b> Michael Thaler</p>	<p><b>Art Unit</b> 3731</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The new issues arise from the amendment to claim 61, line 6. Claim 61, prior to the amendment, merely required the prosthesis to have struts of a particular cross-section. It may be argued that claim 61, as amended, requires the struts in each of the axially spaced bands to have the particular cross-section. (See 37 CFR 1.116 and 41.33(a)).

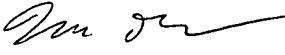
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: 65, 68, 76-82, 85 and 88.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 61, 64, 69-75, 86 and 87.  
 Claim(s) withdrawn from consideration: 83 and 84.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see the attached page.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_

  
 Michael Thaler  
 Primary Examiner  
 Art Unit: 3731

Continuation of 5. Applicant's reply has overcome the following rejection(s): claim 85 on the ground of nonstatutory obviousness-type double patenting.

Art Unit: 3731

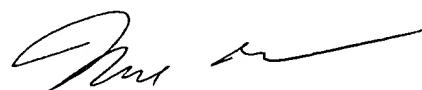
As to the rejection under 35 USC 112, 2<sup>nd</sup> paragraph, the statement in lines 5-6 of page 6 of the response is incorrect, noting the amendment to page 27, line 1 and page 28, line 8 of the specification filed Dec. 12, 2000. The rejection of claims 86 and 64 have not been addressed.

As to the rejection under 35 USC 102 and 103, Purdy discloses a plurality of axially spaced serpentine bands. One band is 110 and the other band is the band which forms struts 150 and which forms part of hood 146. These bands are connected one to the other by the material described in col. 8, lines 45-47.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht  
6/7/06



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731